



The circumstances of family and friends carers who are raising children on the brink of care

**A submission to the House of Commons
Work and Pensions Select Committee' Carers Inquiry
by
Family Rights Group**

May 2008

SUMMARY OF KEY RECOMMENDATIONS

Consistent with the proposals in Care Matters: Time for Change and the Children and Young Persons Bill (CYP Bill) these recommendations seek to:

- enable more vulnerable children who cannot live with their parents to be raised by relatives rather than being taken into, or remaining in, the care system;
- ensure that children being raised by relatives and friends are recognised as *children in need* and are thus entitled to an assessment by the local authority of their specific needs;
- require local authorities to provide suitable support services to children being raised by family and friends carers, including assistance with contact arrangements;
- enable family and friends to get public funding to apply for a legal order to safeguard a child where appropriate;
- ensure that family and friends carers who are raising children who cannot live with their parents are entitled to a national financial allowance, so as to avoid being plunged into financial hardship as a result of becoming carers.

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1. INTRODUCTION

1.1 This response has been developed by Family Rights Group in consultation with the Kinship Care Alliance

1.2 Family Rights Group is the charity in England and Wales that advises parents and other family members whose children are involved with, or require, social care services. We run a confidential telephone advice service for families. Established in 1974, we promote policies and practices that assist children to be raised safely and securely within their families.

1.3 Since 2006 Family Rights Group has been meeting regularly with a number of voluntary organisations working with family and friends carers, local authorities and academics, under the auspices of the *Kinship Care Alliance*. Members of the *Alliance* include Barnardo's, BAAF, Family Welfare Association, National Children's Bureau, NCH, Parentline Plus, The Fostering Network, The Grandparents' Association and Voice. The *Alliance* has proved an important vehicle for developing a joint policy agenda designed to:

- prevent children from being unnecessarily raised outside their family; and
- enhance outcomes for children who cannot live with their parents and who are living with relatives.

1.4 Since the *Alliance's* formation there have been welcome developments:

- The Public Law Outline¹ and recent guidance to local authorities² recommends that all family and friends care options should have been explored before care proceedings are started.
- The inclusion of provisions in the Children and Young Persons Bill (clause 9) to ensure that *looked after* children, who cannot return home, are, wherever possible, placed with relatives who are approved as local authority foster carers, and hence are paid accordingly.
- The government's pledge to introduce a framework for family and friends care as part of revised Children Act guidance to be completed in 2009, although the content at this stage is still vague.

1.5 Nevertheless we have significant concerns about the lack of effective support for relatives and friends who take on the upbringing of children who are outside the looked after system but on the edge of care 1.6 This submission sets out the current context for family and friends carers, outlines our concerns and details our recommendations.

2. WHEN DOES FAMILY AND FRIENDS CARE ARISE?

2.1 There are no official statistics of the total number of children living with relatives but the estimated figure is between 200,000-300,000³ children, only 12,100 of whom are *looked-after* children⁴.

¹ Judiciary of England & Wales/Ministry of Justice (April 2008) *The Public Law Outline: Guide to Case Management in Public Law Proceedings* www.justice.gov.uk/guidance/careproceedings.htm

² DCSF (2008) Children Act 1989 Regulations and Guidance, Volume 1 Court Orders <http://www.justice.gov.uk/guidance/careproceedings.htm>

2.2 Family members often start to care for a child because there is a crisis in the parental home. For example, there may have been incidents of violence, alcohol or drug misuse, mental or physical illness, disability, a death, separation, divorce, domestic abuse, imprisonment, or any combination of these. The children concerned are likely to have experienced trauma and possibly inadequate or inappropriate parenting as a result of being exposed to any of these circumstances. Some relatives and friends who step in to care for the child in an emergency may be dealing with a situation that starts as a short term arrangement but becomes open ended with no clear indication as to how long it will continue. In many cases it becomes clear later that the children are with them indefinitely and many of them are left struggling to survive financially, emotionally and socially⁵, receiving little, if anything, from the state to meet the child's needs, despite having no financial liability for the child in law⁶. This is discussed further below.

2.3 The agencies involved in the *Kinship Care Alliance* are also aware that there are many more relatives who, with the right support and assistance, could and would wish to care for children who cannot live with their parents.

3. WHAT ARE THE SUPPORT NEEDS OF FAMILY AND FRIENDS CARERS?

3.1 Research suggests that there are well evidenced advantages⁷ for children who cannot live with their parents to being raised by family and friends:

- Children in family and friends care tend to be in more stable placements than those placed with unrelated foster carers.
- Children feel loved and report high levels of satisfaction.
- Children appear to be as safe and their behaviour perceived to be less of a problem when compared to children with unrelated foster carers.
- Children placed with relatives can more easily maintain a sense of family and cultural identity.
- Contact with family members is more likely to be maintained, with the entailing benefits to the child.

³ Richards A and Tapsfield R (2003) *Funding Family and Friends Care: The Way Forward* (Family Rights Group)

⁴ DCSF: Children looked after in England (including adoption and care leavers) year ending 31 March 2007 Table A3

⁵ Hunt, Waterhouse and Lutman (2008 forthcoming) *Keeping them in the Family: Outcomes for abused and neglected children placed with family or friends carers through care proceedings* (BAAF) ⁶ Farmer E and Moyers S (2005) 'Children Placed with Family and Friends: Placement, Patterns and Outcomes', *Report to the DfES, School for Policy Studies, University of Bristol*

⁶ Parents are liable to support their children (s.1 Child Support Act 1991); relatives and friends are not unless they adopt the child and hence become the legal parents. It is therefore the responsibility of the state to support family and friends caring for children when the parents cannot, yet such support is not forthcoming.

⁷ Roskill C (2007 forthcoming) *Wider Family Matters* (Family Rights Group); Doolan et al (2004) *Growing up in the Care of Relatives and Friends* (Family Rights Group); Hunt J (2003) *Family and Friends Care*; Scoping Paper for Dept of Health; Broad, B (ed) (2001) *Kinship Care: the placement of choice for children and young people* (Russell House)

3.2 However, Farmer and Moyers (2005)⁸ found that *“family and friend carers were significantly more disadvantaged than unrelated foster carers. Significantly more were lone carers (27% v 14%) and they lived, at least initially, in overcrowded conditions (35% v 4%). In addition, many more kin carers had a disability or chronic illness (31% v 17%) and experienced financial hardship (75% v 13%)....The most pressing (need) was for counselling and specialist help for children with severe and persistent behavioural and emotional difficulties. They also required adequate financial payments to cover the costs of caring for the children. Some carers were in situations of severe financial hardship.”* They conclude *“carers’ commitment and willingness to continue against the odds benefits the children they are looking after, but the good outcomes for these children are sometimes achieved at the expense of the kin carers themselves.”*

3.3 Furthermore, family and friends carers receive significantly less support in managing contact arrangements than non-related foster carers, despite the complex situations that they often have to address.⁹

3.4. In taking on the care of a young relative, many family and friends carers have either to give up employment entirely or significantly reduce their hours. Grandparents form the majority of relative carers, yet many grandparents find that they are not only taking on the care of a traumatised child, but they often feel isolated, without peers able and willing to help out with childcare. State agencies often give contradictory and incorrect information to such carers. For example, we have several cases from the advice service of relatives reporting that they have been told by social workers that they must give up their job and ‘go on benefits’ in order to take on the care of the child/ren given their vulnerability. Yet, as Frank Field MP has highlighted previously in the press, we also have evidence of carers of working age being incorrectly threatened by Jobcentre Plus staff with loss of income support if they did not make themselves available for work.

3.5 For many grandparents, the only option they have is to take early retirement in order to bring up their grandchildren yet this almost certainly means they find themselves on a lower income because:

- Loss of earnings by giving up work
- They are unable to collect the state pension until they reach pensionable age, although when they do reach that age the pension they will be entitled to will still be lower because they will have built up fewer ‘qualifying years’.
- Currently, people can receive a company or private pension from age 50, although in 2010 this will rise to 55. However, the private pension that is received will be at a lower rate, both on account of the lower level of contributions made and on the longer period of time that it is anticipated the pension will have to cover.

⁸ Farmer and Moyers (2005), *ibid*

⁹ Farmer and Moyers (2005), *ibid*

*“Like most we have had a dramatic change of life style. All ‘retirement’ plans gone. I had to give up work and if I try and return later I will have lost all seniority therefore will be on minimum wage
- grandparent carer, Family Rights Group Discussion Board*

3.6 In addition to the cost of caring for a child for whom the carer has no legal financial responsibility, there are also additional costs in taking on the care of a vulnerable child. According to research, the cost of caring for a foster child is fifty percent higher than the cost of caring for a birth child¹⁰.

3.7 There are wide variations between local authorities in policies, support, finance and attitudes towards family and friends care and in numbers of children placed with family and friends. A recent freedom of information survey conducted by Family Rights Group revealed that some authorities don’t have published policies setting out what support is available to carers, many have policies which allow the authority considerable discretion and don’t spell out clear criteria upon which a carer/child will be assessed and in a minority of cases the policies are unintelligible.

*“We have never been told what we are entitled to. The reason given is that the policies are not written yet. Or nobody knows as this is new. How do we find out what we are entitled to?
- grandparent carer, Family Rights Group Discussion Board*

3.8 There is a lack of basic demographic data and socio-economic information on family and friends carers. The Department for Work and Pensions, for example, claims to hold no information on the numbers of grandparents claiming income support allowances for their grandchildren. This absence of data means that children who are outside the care system and being raised by family and friends carers have to date been effectively ‘invisible’ in high-level discussions, for example on tackling child poverty.

3.9 We share the views expressed in *Care Matters: Time for Change* that family and friends care needs to be the first option for children coming into state care and that more children could be placed in family and friends care. However it is crucial that the needs of family and friends carers are addressed if these children are to reach their full potential. Lack of support can have a detrimental effect on the child and the carer, and sometimes causes the placement to break down and the children to end up in the state care system after all.

4. WHAT SUPPORT IS AVAILABLE TO FAMILY AND FRIENDS CARERS?

¹⁰ Oldfield N *The Adequacy of Foster Care Allowances* (Ashgate Publishing Limited, 1997); Unpublished paper for the Department of Health 2001

4.1 Despite there being little or no difference in terms of need between those children who are in the looked after system and those on the brink of care¹¹, there is a substantial difference in terms of financial assistance and support received by such carers, because their entitlement to support varies according to the legal status of the child's placement as outlined below:

4.2 Support associated with different legal status:

A child is 'looked after' when s/he is in care under a care or emergency protection order or when s/he is accommodated by agreement with the parents or others with parental responsibility (s.22 (1) Children Act 1989).

4.2.1 **The duty on local authorities to support looked after children:**

When a child is *looked after* by a local authority, they are under a **duty to place the child with his/her parents or wider family and friends**, unless this is 'not reasonably practicable or consistent with his welfare' (s23 (6) CA). When this occurs, the relative or friend is approved as a local authority foster carer¹² for that child and local authority has statutory responsibility for the child.

4.2.2 Such 'family and friends foster carers' are entitled to receive a fostering allowance. The amount will depend on the policy of the local authority although a minimum national rate was introduced in England in 2007. The same rate of fostering allowance should be paid regardless of whether the foster carer is related or unrelated to the child¹³.

4.2.3 However this is not always as straightforward as it sounds:

- § there are many examples of poor practice, with local authorities denying responsibility for children who are placed with relatives by claiming they merely facilitated a private arrangement within the family and acted as a 'taxi' service" in bringing the child to the relative, thereby refusing to accept the child is looked after and the associated duties that places on the local authority¹⁴. In these circumstances the carer can only access discretionary support from the local authority as outlined in the next section;
- § a recent survey by Fostering Network found that 25 local authorities admitted to paying their family and friends foster carers at a lower rate than other foster carers¹⁵. Moreover family and friends foster carers may be denied skills, holiday and birthday allowances.

4.2.4 **Discretionary support for children on the edge of care who are not looked after:**

Relatives will often take precipitate action to prevent children unnecessarily entering the care system. This often arises where a local authority suspects a

¹¹ Farmer and Moyers (2005) *ibid*

¹² The local authority is able to place a child immediately with relatives and friends for up to **six weeks** provided they have undertaken preliminary checks. If the placement continues beyond six weeks, the local authority will need to undertake a full assessment to **approve the carer as a foster carer** for that child.

¹³ *The Queen on the application of L-v Manchester City Council 2001 EWHC Admin 707*

¹⁴ *D-v Southwark LBC [2007] EWCA Civ 182*

¹⁵ The Fostering Network Survey of allowances and fee payment schemes 2007-08: recommended minimum allowances

child is at risk of harm and as a result instigates child protection enquiries and takes necessary action to ensure the child's safety and well-being including drawing up a plan¹⁶. Sometimes arrangements will be made between the parents and relatives with the strong encouragement of the local authority that the child goes to live with relatives. Such children are clearly very vulnerable but because the relative has stepped in, they do not become *looked after*. In such circumstances the local authority may encourage the carer to apply for a residence order or special guardianship order to provide the child with greater security, but often there is no legal order in place.

- a) **Residence orders do not trigger any entitlement to support** but may lead to a discretionary payment of a residence order allowance.¹⁷ The rate may vary over time and from one local authority to another. Local authorities can also provide support to the carer under s.17 CA where the child is assessed as being 'in need'¹⁸, for example, they can help with the legal costs of applying for a residence order, but the threshold for receiving such support is so high that it is denied to many family and friends carers. This has meant that a significant number of grandparents, who have applied for a residence order, following strong recommendations of the local authority, have found themselves facing a contested legal battle alone with the child's parent (often their own daughter) with legal costs mounting to thousands of pounds.

"I had a solicitor but I have now had to go it alone as I've run out of funds and I'm not entitled to legal aid. We have sold everything that we could to fight for these girls but if we get the RO it will be more than worth it."
- grandparent carer, Family Rights Group discussion board

- b) **Special guardianship orders** can result in financial and other support, including help with legal costs, being provided (s.14F CA) if the child or special guardian is assessed as needing support, but again this is **discretionary**¹⁹. Unlike residence orders, the local authority must make arrangements to provide support services to meet the needs of people affected by special guardianship in their area but that doesn't mean that individual carers are entitled to have their or the child's needs assessed or provided for.
- c) **No legal order:** A significant number of children are living with relatives without there being any legal order in place. If the carer is not a relative within the definition in s.105 CA²⁰, then this is a private

¹⁶ This is required s.47 CA.

¹⁷ Under schedule 1 paragraph 15 CA 1989.

¹⁸ A "child in need" is defined in s.17(10) and (11) as a child who is aged under 18 and who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by a local authority; or whose health or development is likely to be significantly impaired or further impaired without the provision of appropriate services by a local authority; or who is disabled. Services can be provided to the families of children in need as well as the children themselves.

¹⁹ If the **child was looked after** by the local authority in care or accommodation **before the special guardianship order** was made, the local authority **must** carry out an assessment for support services if required but they are not under a duty to provide support.

²⁰ A private fostering arrangement arises where a person, who is neither a LA foster carer, nor a relative within the meaning of s.105 CA i.e. not a grandparent, sibling, aunt or uncle (half or full blood or by affinity) or step-parent

fostering arrangement. There is no support entitlement automatically associated with such arrangements, although again discretionary support may be provided under s.17 if the child is assessed as being in need. Further, if at least one of the child's parents has died, the carer may be able to claim **guardian's allowance** which amounts to £13.45 a week per child, although the narrow criteria means this is only applicable to a small proportion of family and friend carers.

4.2.5 Benefits and tax credits:

Relatives raising children outside the care system for a significant period of time are able to claim child benefit and tax credits; however, this doesn't reflect the full additional costs and responsibilities of taking on a child who is not one's own.

5. NEW DETAILED RECOMMENDATIONS

5.1 Collection and publication of official statistics

Statistics – recommendation

1. That the government collects and publishes official statistics of children being raised by relatives and friends, including detailed socio-economic data.

5.2 Systems for providing support:

The system for supporting family and friends care needs to be fundamentally revised and address:

- Immediate/short term needs where family and friends come forward to care for a child in an emergency to avert the immediate need for the child to be taken into state care; and
- Longer term needs where family and friends take on the care of a child on a long term or permanent basis

5.3 Meeting immediate short term needs of children and carers where the child is not looked after:

The immediate support needs for carers of children who are not looked after are best met by services being provided under s.17 CA where the child is in need as defined in s.17(10). We strongly welcome the proposals in the Children Young Persons Bill to enable cash help to be provided in such circumstances (see clause 24). Yet evidence from our advice line suggests that some local authorities are operating such high thresholds for child in need that they are refusing to even assess a child's need for support unless s/he is at risk of harm. By going to live with a relative the immediate risk of harm has normally been removed and in such circumstances neither the child or carer's acute needs are therefore assessed, let alone met. This could be overcome if

(including civil partners), is looking after or proposes to look after a child (who is not their own) for a period which is or is intended to be more than 28 days..

the Children Act 1989 were amended to include a statutory right to assessment of their needs under s.17 Children Act 1989, as is the case for disabled children.

Meeting short term needs - recommendation

1. The definition of who is a child in need in s.17 (10) be amended to include:

(d) children being cared for by family members or friends

5.4 Meeting needs where family and friends take on the care of a child on a long term or permanent basis

Currently, the only way in which such carers can be guaranteed access to the support they need is for the child to be 'looked after' i.e. to be and remain formally in the state care system. Yet there may be no other good reason why the child needs to be in care. **We therefore recommend** that a family and friends care support system be developed on a statutory basis for family and friends carers who have an established caring arrangement of a child who is not, or does not need to remain, looked after. This would entail:

- i. The local authority being under a duty to establish family and friends care support services, including commissioning services from the voluntary sector. These services should include the provision of support groups and assistance with contact arrangements, such as mediation. This would mirror the duties introduced under the Adoption and Children Act 2002 in respect of adoption and special guardianship.
- ii. Improved communication, co-ordination, understanding and prioritisation of the needs of these children and their families, including carers, by public agencies including schools, CAMHS, and housing and between adults and children's services, for example in addressing the impact of parental alcohol and substance misuse.
- iii. Children who are being raised by family and friends carers on a long term basis (more than 28 days) and cannot live with their parents, having a right to an assessment for long term support and the provision of services to meet said need.

Meeting longer term needs of carers and children – new recommendations

In order to ensure carers receive the support they need to meet the needs of these children, we recommend that:

1. A new statutory framework is introduced that places local authorities under a statutory duty to provide children being raised by family and friends, their carers and birth parents with support services including support with contact and respite care.

2. Government provides local authorities with the funds to enable them to run and commission such services, including sustainable support groups.

5.5 Financial support

In law, at least, relatives and friends are not financially liable for the children they are raising. Therefore it follows that, if the parents cannot provide, the core financial needs of caring for such children should be met by central government. Family and friends carers, who are caring for more than 28 days for children who cannot remain at home with their parents and are not looked after, should be entitled to a national financial allowance.

5.5.1 National financial allowance - detailed proposal

A national non-means tested financial allowance to cover the real costs of raising a child should be paid to relatives or other persons already connected to the child²¹, who take on the care of a child for more than 28 days continuously in the following circumstances:

- a) Where the child comes to live with the carer as a result of plans made within a section 47 child protection enquiry; or
- b) Where a child comes to live with the carer following a section 37 investigation;
- c) Where a carer has secured a Residence Order or Special Guardianship Order to avoid a child being looked after, and there is professional evidence of the impairment of the parents' ability to care for the child; and/or
- d) Where the carer has a Residence Order or Special Guardianship Order arising out of care proceedings; or
- e) Where the carer has a Residence Order, Special Guardianship Order following the accommodation of a child.

These criteria are designed to ensure that the financial allowance will only be received where:

- a) the carer is raising the child; and
- b) the parent is unable to care for the child and there is judicial or professional evidence of this.

5.5.2 Legal costs:

Where a child is living with a relative with the consent of the parent but without a legal order, the carer may face continual problems because they do not have parental responsibility for the child, yet going to court might upset the fragile relationship that they have negotiated. Moreover such a carer may have to overcome more hurdles than an unrelated foster carer to obtain a legal order, such as residence or special guardianship order. That's why we welcome the provisions in the Children and Young Persons Bill to remove the

²¹ This could include family friends

leave requirement for relatives applying for a residence or special guardianship order after one year of caring for the child. However many family and friends carers are left with crippling legal bills when applying to court, for example for a residence or special guardianship order to provide permanence and legal security for the child. Others find that without financial means, they have to represent themselves, which can be very traumatic, particularly in contested cases. We therefore recommend that family and friends carers who are taking on the long term care of a child as an alternative to the child going into care should be entitled to non-means tested public funding to apply for an order which will secure the child's placement with them.

5.5.3 Ending financial discrimination against family and friends carers of looked after children

There will always be cases where children are placed with family and friends carers but remain *looked after* by the local authority because there are ongoing welfare or protection issues. These carers will access support through the fostering system like any other approved foster carers. However, as described previously in paragraph 4.2.3 some receive less support than unrelated foster carers²² despite it being held by the courts that it is unlawful to discriminate against family and friends carers by paying them less than unrelated foster carers²³. Research evidence also indicates that family and friends carers are far less likely to have the support of an allocated family placements social worker²⁴. Government guidance needs to be issued to ensure that family and friends foster carers are no longer discriminate against in terms of the financial allowance they receive.

Financial support - New recommendations

1. Family and friends raising a child who cannot live with their parents for more than 28 days should be entitled to a national allowance to cover the core financial costs of caring for such children.
2. Relatives and friends should be entitled to receive public funding for legal proceedings which secure the child's future with them on a non-means and non-merits tested basis.
3. Government guidance needs to be issued to ensure that family and friends foster carers are no longer discriminated against in terms of the financial allowance they receive

²² Farmer and Moyers (2005) *ibid*

²³ The Queen on the Application of L and others –v- Manchester City Council: The Queen on the Application of R and another –v- Manchester City Council [2002] 1 FLR 43

²⁴ Farmer and Moyers (2005) *ibid*